

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

BILLY J. CANNON,

Plaintiff,

v.

DROST, et al.,

Defendants.

ORDER

Case No. 21-cv-636-jdp
App. No. 23-3095

Plaintiff Billy J. Cannon has filed a notice of appeal from an order entered on September 26, 2023. Plaintiff has also filed a motion to use release account funds to pay the entire \$505 appellate filing fee. (Dkt. 48.) For the reasons stated below, this motion will be denied.

When a prisoner files a motion for leave to proceed *in forma pauperis*, the district court must determine whether the prisoner qualifies for indigent status and, if so, what portion of the filing fee the prisoner must prepay under 28 U.S.C. § 1915(b)(1). If the prisoner does not have enough money in his regular inmate account, then prison officials will draw funds first from his regular account, and any portion of the initial partial payment remaining from his release account. *Carter v. Bennett*, 399 F. Supp. 2d 936, 936-37 (W.D. Wis. 2005). This court does not have authority to order prison officials to allow a prisoner to use release account funds for any other purpose, in any other amount.

In this case, plaintiff has not filed a motion to proceed *in forma pauperis* on appeal. Since I have no authority to order prison officials to allow plaintiff to use release account funds in the absence of such a motion, his motion to use release account funds is denied.

ORDER

IT IS ORDERED that that plaintiff Billy J. Cannon's motion for an order directing prison officials to pay the entire \$505 appeal filing fee with funds from his release account is DENIED. Plaintiff may have until November 28, 2023, to pay the filing fee or file a properly supported motion for leave to proceed *in forma pauperis* on appeal.

Entered this 7th day of November, 2023.

BY THE COURT:

ANDREW R. WISEMAN
United States Magistrate Judge